

# LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

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**DATE:** JUNE 7, 2004  
**FROM:** KATHLEEN ROLLINGS-McDONALD, Executive Officer  
**TO:** LOCAL AGENCY FORMATION COMMISSION

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**SUBJECT: Agenda Item #5:** Consideration of Exemption for LAFCO SC#226  
– Agreement between San Bernardino County Consolidated Fire  
District and Hesperia Fire Protection District for Fire Protection  
and Emergency Medical Services

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## **RECOMMENDATION:**

That the Commission takes one of the following actions:

- a. If the determination is made that the Commission remains the finder of fact for issues outlined within the exemption provisions of Government Code Section 56133 Subsection (e), confirm that LAFCO SC#226 complies with the exemption listed within Government Code Section 56133 Subsection (e) and, therefore, does not require Commission approval to proceed.
- b. If the Commission accepts the rationale of the County Counsel office that no independent review of these findings is required, accept the withdrawal request submitted by Chief Peter Hills.

## **BACKGROUND:**

On April 21, 2004, the County Consolidated Fire District, through Chief Peter Hills, submitted its request that the Commission determine that the Fire Protection Agreement described below is exempt from the provisions of Government Code Section 56133. The Agreement has been entered into by the County of San Bernardino, on behalf of the San Bernardino County Consolidated Fire District (County Service Area 70) and County Service Area 38, and by the Hesperia Fire Protection District for the provision of fire

prevention, fire investigation, fire suppression, rescue advance life support (ALS), ambulance transportation, hazardous materials and household hazardous waste services (the “Fire Protection Services Agreement”).

The staff placed the item on the Commission’s next available agenda, as it has for numerous other exemptions, for confirmation that the agreement/contract complied with the provision outlined in Government Code Section 56133 Subsection (e). However, on June 1, 2004, Chief Peter Hills submitted a withdrawal request identifying the position of County Counsel that no confirmation of the facts surrounding the exemption was necessary; therefore, no review by the Commission was required. LAFCO staff respectfully disagrees and has contacted the County Counsel’s office regarding its position and has reviewed its position with LAFCO Legal Counsel. At the time this report was required to be printed, no dialogue between staff and County Counsel had taken place; however, an outline of these discussions will be presented at the hearing.

LAFCO staff has on numerous occasions acknowledged the ambiguity of the provisions contained within Government Code Section 56133. Of note in that regard, the CALAFCO Legislative Committee has established a subcommittee to look at these provisions due to the numerous concerns on their interpretation. However, it remains the staff’s position, regardless of the ambiguity, that the finder of fact for the findings confirming an exemption remains the Commission. These are specific findings that need to be independently made regarding whether or not an agreement or contract is exempt from this review. The exemption within Government Code Section 56133 (e) reads in part:

*“This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider...”*

Historically, the Commission has reviewed a number of exemption requests, such as the case of the City of Fontana’s contractual assumption of service for Foothill Blvd. heard on the May agenda, the City of Redlands’ request to confirm their ability to extend services into the Doughnut Hole area for fire and police, etc. In each case, the Commission has reviewed the findings related to the exemption, confirmed that the facts supported the findings, and confirmed that the exemption identified in Subsection (e) of Government Code

Section 56133 was appropriate. It remains the staff's position that an independent review of the findings outlined in this code section is what was envisioned by the authors of the exemption language and that the independent, impartial body to consider those findings remains the Commission.

If the Commission concurs with the staff's position that it remains the finder of fact, staff believes that the findings identified in the provisions of Subsection (e) of Section 56133 are applicable and, therefore, exempts from LAFCO review the Fire Protection Services Agreement. The basis for the staff's position is outlined in the response to the findings required by Subsection (e). They are described as follows:

1. The Fire Protection Services Agreement presented is between the County Consolidated Fire District (governed by the County Board of Supervisors through the auspices of County Service Area 70 and County Service Area 38) and the Hesperia Fire Protection District (governed by the City Council of the City of Hesperia as a subsidiary district) – all of which are legally defined as public agencies.
2. The public services to be provided includes a wide range of fire protection services, advanced life support (paramedic) services, and hazardous materials services to the area of the current Hesperia Fire Protection District -- services already being provided by an existing public service provider (identified in Fire Protection Services Agreement included as Attachment #3).
3. The Hesperia Fire Protection District is contracting to receive these services for the area defined as its existing service area as an alternative to its provision of these services (map included as Attachment #1).
4. The level of service to be provided through this contract is consistent with the level of service contemplated by the Hesperia Fire Protection District, existing public service provider, as outlined in its Fire Master Plan (correspondence from Mr. Robb Quincey, City Manager for City of Hesperia – included as Attachment #5).

On the basis of the findings outlined above, the staff would recommend that the Commission confirm that pursuant to Government Code Section 56133 Subsection (e), the Fire Protection Services Agreement entered into by the Hesperia Fire Protection District and the County of San Bernardino, on behalf of County Service Areas 38 and 70, is not subject to the provisions within

Government Code Section 56133 requiring review and approval of the Commission.

However, if the Commission agrees with the rationale presented by the County Counsel Office, that no independent review is necessary, the staff would recommend that the Commission accept the withdrawal request submitted by Chief Peter Hills.

KRM/

Attachments:

1. Map of Hesperia Fire Protection District
2. Request for Withdrawal of Consideration of Fire Protection Agreement, dated June 1, 2004, from Chief Peter Hills
3. Government Code Section 56133
4. Request by County of San Bernardino for exemption determination on Fire Protection Agreement
5. Letter from Mr. Robb Quincey, City Manager for City of Hesperia